Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *L. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 518

Tribunal File Number: AD-16-1380

BETWEEN:

L. S.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: October 5, 2017

REASONS AND DECISION

INTRODUCTION

[1] On September 17, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* (CPP) was not payable to the Applicant.

[2] The Applicant filed an incomplete application for leave to appeal (Application) with the Tribunal's Appeal Division on December 16, 2016.

[3] The Applicant filed further information, and the Application was considered completed on January 17, 2017.

[4] The Applicant's reasons for appeal can be summarized as follows:

a) The General Division based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

b) She has several medical impairments, which prevent her from maintaining work.

c) After the General Division hearing, she realized that she should not have attended by herself.

d) The criterion of her being capable of working was "very questionable."

e) The issues need to be discussed more thoroughly before a final decision is made.

ISSUE

[5] Does the appeal have a reasonable chance of success?

THE LAW

[6] Pursuant to subsections 57(1) and (2) of the *Department of Employment and Social Development Act* (DESD Act), an application for leave to appeal must be made to the Appeal Division within 90 days after the day on which the decision appealed from was communicated to the appellant.

[7] According to subsections 56(1) and 58(3) of the DESD Act, "An appeal to the Appeal Division may only be brought if leave to appeal is granted," and "The Appeal Division must either grant or refuse leave to appeal."

[8] Subsection 58(2) of the DESD Act provides that "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

[9] Subsection 58(1) of the DESD Act states that the only grounds of appeal are the following:

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

ANALYSIS

[10] The Applicant had applied for a disability pension in September 2013. The Respondent refused the application initially and upon reconsideration on the basis that, while the Applicant had certain restrictions due to his medical condition, the information did not show that those limitations prevented him from doing some type of work.

[11] The Applicant appealed that decision to the Tribunal's General Division. The General Division decided the appeal after conducting an in-person hearing. The Applicant gave

evidence at the hearing. The Respondent was not present but had filed written submissions prior to the hearing.

[12] The issue before the General Division was whether the Applicant had had a severe and prolonged disability on or before December 31, 2014, which was her minimum qualifying period (MQP).

[13] The General Division reviewed the evidence and the parties' submissions. It rendered a written decision that was understandable, sufficiently detailed and that provided a logical basis for the decision. The General Division weighed the evidence and gave reasons for its analysis of the evidence, as well as of the law. These are the General Division's proper roles.

[14] The Application submitted to the Appeal Division argues that the Applicant is disabled and that she should not have attended the General Division hearing alone.

[15] For the most part, the Application repeats the Applicant's submissions before the General Division (that she is disabled and cannot work).

[16] The Applicant argues that the General Division's findings on her capacity to work are "very questionable." She submits that her "codependency needs" need to be discussed more thoroughly and that this issue was not discussed with medical professionals when her condition was being evaluated originally. As to the specific factual errors that the Applicant has alleged, she argues that she has severe medical impairments "that greatly impact" her and prevent her from "maintaining work." She notes that her current attempt to return to work "is failing" and that her "health is regressing again."

[17] Capacity to work: The General Division analyzes this issue at paragraphs 25 to 29. It found that there is evidence of work capacity and concluded that the Applicant had not met the obligation set out in *Inclima v. Canada (Attorney General)*, 2003 FCA 117 (that she had made efforts at obtaining and maintaining employment, and that she had been unsuccessful by reason of her health condition). The General Division did not make this finding "in a perverse or capricious manner or without regard for the material before it."

[18] Codependency needs: If the Applicant is raising a new medical issue, then this should have been done with her physicians prior to now. The onus is on the claimant to demonstrate that he or she has a severe and prolonged disability as defined in the CPP. It is incumbent on the claimant to seek medical opinion, in a timely manner, if he or she was dissatisfied with the earlier opinions that he or she had received. At this late stage, the Applicant cannot simply assert that she has a medical issue that was not previously evaluated and that this forms a basis for appeal of a General Division decision.

[19] The Applicant's ground of appeal that her "codependency needs" have not been evaluated by medical professionals does not have a reasonable chance of success.

[20] Medical impairments and attempt to return to work: A repetition that one is disabled and cannot work is not sufficient to meet the threshold of "reasonable chance of success." New evidence is not a ground of appeal under section 58 of the DESD Act. Therefore, the appeal does not have a reasonable chance of success on the basis of these reasons for appeal.

[21] Once leave to appeal has been granted, the Appeal Division's role is to determine whether the General Division has made a reviewable error set out in subsection 58(1) of the DESD Act and, if so, to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the Appeal Division to intervene. It is not the Appeal Division's role to rehear the case *de novo*. It is in this context that the Appeal Division must determine, at the leave to appeal stage, whether the appeal has a reasonable chance of success.

[22] I have read and carefully considered the General Division decision and the record. There is no suggestion that the General Division failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law or any erroneous findings of fact that the General Division, in coming to its decision, may have made in a perverse or capricious manner or without regard for the material before it.

[23] I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[24] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division